



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER

HENRY JENNINGS
ACTING DIRECTOR

TO: Board Members
FROM: Lebelles Hicks PhD DABT
RE: ERAC Update

September 14, 2006

The ERAC met from 9:00 to 12:00 on September 13th. Presentations were made by Dr. Diane Cowan of the Maine Lobster Conservancy (Informational presentation on lobster molting habits) and Heather Jackson of the BPC staff (06 Drift Monitoring Study of Ground Applications). Invited guests included: Marty Folsom and Bill Raleigh from Lucas Tree Company and Patrice McCarron from the Maine Lobsterman's Association. Following discussion of the drift study required by 22 MRSA § 1445 and its limitations (i. e. variability, lack of replication), the conclusion was reached that the 50ft buffer appears to be adequate for protection of the water resources provided the wind is off the ocean and the spray is directed away from the water.

The consensus of the ERAC and the invited guests was to ask the legislature to take two actions:

- 1st To extend the current law 22 MRSA § 1445 for another year with the following modifications:
 - § 2. Add "mist blowers" to list of equipment between 50 and 250 ft
 - § 2.D Add "and wind speed is greater than or equal to 3 mph"
 - § 4. Add an exemption for "non-powered equipment used by appropriately certified and licensed applicators"
- 2nd To sunset the amended statute on March 31, 2008 in order that there would be time for the Board to incorporate the above protections for marine resources in regulation.

The committee also wanted to include a recommendation that the legislature sponsor an educational program for homeowners in the affected (BTM) area to prevent irresponsible pesticide use and to emphasize possible alternatives for the zero to 50' zone: clipping, pheromones, tree injection, hiring an appropriately certified, licensed applicator etc.

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the spraying of pesticides to curtail browntail moth populations begins in the spring; and

Whereas, action is needed to reduce the risk to marine organisms from pesticides used to curtail browntail moths; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1444, sub-§4 is enacted to read:

4. Limits on pesticide applications. Pesticide applications near coastal waters in Cumberland, Sagadahoc and York counties to control browntail moths must be in compliance with section 1445.

This subsection is repealed March 31, 2007.

Sec. 2. 22 MRSA §1445 is enacted to read:

§1445. Restrictions on application of pesticides to control browntail moths in coastal areas

This section applies to the application of pesticides to control browntail moths in coastal areas. For the purposes of this section, "coastal areas" means land in Cumberland, Sagadahoc and York counties abutting coastal waters as defined in Title 12, section 6001, subsection 6, except that coastal areas extend inland up rivers and streams only as far as the first bridge.

1. Prohibition on application of pesticides. A person may not apply a pesticide to control browntail moths on shade or ornamental trees within 50 feet of the mean high water mark in coastal areas.

2. Restrictions on applications between 50 and 250 feet of mean high water mark. A person may not apply a pesticide to control browntail moths on shade or ornamental trees in coastal areas located between 50 and 250 feet from the mean high water mark except in accordance with this subsection.

A. Only products with the active ingredients diflubenzuron, permethrin, tau-fluvalinate or cyfluthrin may be applied.

B. Applications may be performed only with a hydraulic hand-held spray gun.

C. Applications may be performed only in a manner in which the applicator directs the spray away from marine waters.

D. Applications may not be made when the wind is blowing toward marine waters.

3. Notification and submission of records. A commercial applicator, as defined in section 1471-C, subsection 5, shall notify the Board of Pesticides Control within the Department of Agriculture, Food and Rural Resources in advance of dates planned for spraying pesticides to control browntail moths in coastal areas. Upon request of the board, a commercial applicator shall submit spray records for such applications.

4. Exemption. The prohibitions and restrictions in this section do not apply to biological pesticides or to the injection of pesticides directly into the soil or into shade and ornamental trees.

5. Repeal. This section is repealed March 31, 2007.

Sec. 3. Board of Pesticides Control; monitoring project; report. The Department of Agriculture, Food and Rural Resources, Board of Pesticides Control shall develop a plan for monitoring hydraulic spray applications of pesticides allowed under the Maine Revised Statutes, Title 22, section 1445, subsection 2 to control browntail moths in coastal areas. Monitoring must occur on selected sites where applications are allowed under that subsection.

The Department of Agriculture, Food and Rural Resources, Board of Pesticides Control, in consultation with an environmental risk advisory committee and the Lobster Conservancy, shall complete an assessment of risks and benefits relating to pesticide applications near marine waters. The board shall report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters by January 2, 2007.

Sec. 4. Legislation authorized. The joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters may report out legislation to the First Regular Session of the 123rd Legislature relating to the application of pesticides near marine waters to control browntail moths.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.'

SUMMARY

This amendment replaces the bill. It establishes buffers and restrictions on the application of pesticides to control browntail moths in coastal areas of Cumberland, Sagadahoc and York counties. These provisions are repealed March 31, 2007. This amendment directs the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control to monitor certain pesticide applications and to complete its assessment of risks and benefits of pesticide applications near coastal waters and to report to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters by January 2, 2007. It authorizes the committee to report out legislation to the 123rd Legislature on pesticide applications in coastal areas.

FISCAL NOTE REQUIRED **(See attached)**